In the case of Zimbabwe, is the notion of rule compliance too limiting a lens through which to analyse the normative effects of international human rights law?

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Abstract

The idea of compliance assumes that International Human Rights are in existence, protected and actively enforced in different states. Measuring compliance is an exercise in policing this enforcement but what this exercise will not show is the state of the human rights in each state. This paper explores the inadequacies of using compliance as a lens to consider the normative effects of international law using Zimbabwe as a case study. This study seeks to illustrate that there must be a wider outlook which creates space for scrutiny of the state of human rights prior to producing tables and figures which shed no light on the media censorship or the rigging of elections.

Keywords *– International Human Rights Law, Compliance, Zimbabwe, Normative Effects, Colonisation*

Introduction

Compliance analysis is indeed too narrow a lens through which to consider the impact of international law.[1] Such analysis is not formulated to illustrate the context in which it is functioning particularly where developing countries and former colonies are concerned. This is because of the colonialist history of the international system and the leadership of these countries. In this piece, the benefits of compliance analysis will be considered and then using Zimbabwe as a case study, the shortcomings of compliance-based analysis will be illustrated culminating in the conclusion that looking beyond compliance is essential as it is an exercise which does not sufficiently reflect the context of the environment in which it is being carried out.

Critical Review of Compliance Analysis as a Human Rights Tool

In this section, the discussion will open with the strengths of and need for compliance-based exercises as a human rights tool. This will then be followed by the arguments made against the use of this tool in the human rights context. What emerges is that there is greater criticism than praise for compliance analysis.

The Value of Compliance Reviews as Physical Indicators

Compliance is useful as the mark of international human rights law because law that is passed must be accompanied by some evidence of enforcement of the law by the parties responsible for doing so which can take the form of disarmament, for example. In this case, it is the states party to treaties signed. As the law stands, it is a string of words on paper and on its own does not give an indication of whether what it stipulates is followed. Laws may not contain enforcement or review mechanisms and require supplementary bodies or activities to be created to carry out this purpose.[2] It is at this point that compliance reviews are vital. Figures or charts are produced providing a visual depiction of the state of agreements made in international law and these indicate whether or not international law is effective and making progress within the various regions and matters dealt with.

[1] Robert Howse and Ruti Teitel, 'Beyond Compliance: Rethinking Why International Law Really Matters', (2010) 1 Global Policy 127
[2] Andrew T. Guzman, 'A Compliance-Based Theory of International Law' (2002) 90(6) California Law Review 1823, 1829

Further, there must be processes in place to hold states accountable once they have signed treaties and compliance analysis is an effective method through which to do this. Without regular investigations into and comparisons[3] between the measures introduced by states to give effect to international law, states may become complacent and only partially enforce the law or not do so at all. Exercises in compliance analysis produce written records that can be used to detect patterns and stored to refer to in the future where states may challenge any admonishment they receive for poor enforcement history.

The Inadequacy of Compliance Reviews

Although the aforementioned arguments are made, it is evident that there are faults in the compliance review system that make it an inadequate tool through which to measure the normative impact of international human rights. This is primarily because of its reliance on figures, which do not reflect reality, and its inability to show the various other forces acting on or present in a state that have led to the calculation given as the final score.

Compliance, in relation to the international human rights law process, is logically the final stage after solutions to a problem have been identified and put into action. It is, therefore, bizarre that this final stage should be considered the yardstick for the normative effects of international law. This is a somewhat shallow approach as it fails to consider in much depth the reasons behind compliance or the lack thereof. It is excessively rigid because of its mechanical effect of simply giving a 'yes' or 'no' response. The context is not taken into consideration, yet it is what dictates just how deeply the ideals and aims of international human rights law will penetrate the different states and their societies. This is not to say compliance analyses should be made redundant, but the main thrust of this piece is to illustrate that if the system itself is to be truly international, then it must be a system that considers the diversity of the states that it is comprised of and their political or historical backgrounds.

[3] Anne Janette Rosga and Margaret L Satterthwaite, "The Trust in Indicators: Measuring Human Rights," (2009) 27 Berkeley Journal of International Law 253, 285 https://scholarship.law.berkeley.edu/cgi/viewcontent.cgi?referer=https://www.google.co.uk/&httpsredir=1&article=1369&context=bjil (accessed 9 December 2018)

Reliance on compliance analysis is narrow and potentially misleading because of the need for quantifiable values to be considered in the process. Three valid points are raised by Anne Janette Rosga and Margaret L Satterthwaite[4] on the weaknesses of using compliance as a measure of human rights. Firstly, 'quantitative measures [are] seen to obscure "the qualitative and subjective nature of human rights'[5] reducing human rights to figures but the problem is that human rights are extensive and have varying effects, many of which cannot be so quantified. The result is that in a bid to produce these figures, detailed explanations of what the results mean, as well as the context in which they exist, are excluded.[6] The case study of Zimbabwe is one that will be explored later to illustrate the importance of context and give a practical example of the inefficiency of compliance-based analyses. By becoming overly technical, compliance minimises or forgets the 'human' in the human rights who holds those rights. Figures are cold and removed from the reality for which they are meant to be an indicator.

The second difficulty is that figures are generally, and wrongly it must be said, assumed to be accurate and objective.[7] In support of this view, Merry highlights that it is hastily concluded that the numbers are neutral and provide a full picture.[8] This is not the reality. In producing these figures, all states have been massed together and often are being ranked on identical scales where certain factors prevalent in the state or acting on the state are nowhere illustrated. These may be the type of government in power, cultural beliefs or the state's history. Because of this dependence on figures, there is already a conflict with the human rights system, which is based on subjectivity and intangible elements. One relevant example is the freedom of expression enshrined in Article 19 of the Universal Declaration of Human Rights. It is impossible to count how much freedom of expression the citizens of a country have, yet

[4] Anne Janette Rosga and Margaret L Satterthwaite, "The Trust in Indicators: Measuring Human Rights," (2009) 27 Berkeley Journal of International Law 27 https://scholarship.law.berkeley.edu/cgi/viewcontent.cgi?referer=https://www.google.co.uk/&httpsredir=1&article=1369&context=bjil (accessed 9 December 2018)
[5] ibid 274
[6] Bengt Jacobsson, 'Standardization and Expert Knowledge' in Nils Brunsson et al. (eds) *A World of Standards* (OUP 2000) 46
[7] ibid (n 3) 283
[8] Sally Engle Merry, 'Measuring the world: Indicators, Human Rights, and Global Governance' (2011) 52 Current Anthropology S83, S89

compliance analysis attempts to put figures to a right better defined as an experience or a sentiment.[9]

The third problematic area is that compliance and accompanying indicators allow 'rule at a distance'[10] by the institutions that are responsible for monitoring human rights. The bodies themselves, such as the U.N. Committee on Economic, Social and Cultural Rights (CESCR), which was the specific example in the article, are no longer in control of the exercise. The bodies leave it to the states to decide which measure of compliance should be used and whether the measures they have put in place are sufficient to match the standards set out in treaties.[11] The compliance box is ticked, but the substantive implementation of the right may not actually match the standard. The monitoring bodies will not see this. Judging the level of compliance is an enormous task but that is not actually given to an identifiable person or group within the state.[12] Rather, the issue is avoided. This approach does little to remedy the distrust that exists between treaty bodies,[13] created to monitor the implementation of what was agreed in the treaty, and the states they are monitoring. This is a product of the human rights system where the task of reporting is based on the states taking the initiative to send in reports. The states decide what information they want to include in their reports, when to send reports and what steps to take following the review of the reports. The distrust is justified as the treaty bodies are aware of this informational gap which harms the integrity of the reports.

Zimbabwe: A Case Study

The case study I have selected is of Zimbabwe, a country which has only recently experienced a change of presidents for the first time in 39 years following a military-led coup in November 2017.[14] This saw the dictator, Robert Mugabe, ousted by Emmerson Mnangagwa.

[9] ibid S88
[10] ibid (n 3) 281
[11] ibid
[12] ibid 304
[13] ibid 303
[14] Timi Asuelime, 'A Coup or Not a Coup: That is the Question in Zimbabwe' (2018) 5(1) Journal of African Foreign Affairs 5-24

Jack Donnelly argues that 'implementation and enforcement of universally held human rights thus is extremely relative, largely a function of where one has the (good or bad) fortune to live.'[15] This is applicable to Zimbabwe whose citizens are currently living under near-dictatorial rule. The incumbent President Mnangagwa has claimed to be as 'soft as wool'[16] in complete contrast to his nickname, The Crocodile; but he is the same man who is held responsible for authorising the Gukurahundi massacre of the Ndebele tribe between 1983 and 1987 killing an estimated 20 000. No apology has yet been made or compensation given to the families of victims and this remains a point of contention between the main tribes in the country, the Ndebele and the Shona. The disregard for the value of human life is evident and it is, therefore, difficult to express the lofty and ideological principles of human rights to such a population.

Zimbabweans knew their leader to use violence as a tool to scare, muzzle and maim the population. In the run-up to the 2008 elections, horrific images were broadcasted, mainly outside the country due to strict media censorship, of those who had lost limbs in the violent attacks. These were ordered by the ruling party (Zimbabwe African National Union-Patriotic Front/ZANU-PF) on villages where supporters of the opposition were thought to live. Morgan Tsvangirai, the leader of the opposition party was a victim of beatings.[17]

Elections are meant to be a show of democracy: 'free and fair' as was the tagline for the July 2018 elections. Observers from the European Union later declared irregularities and a lack of transparency in the electoral process but Mnangagwa sits as president today. The report that the observer mission subsequently published[18] made little difference as it fell on deaf ears. If the will of the people, represented by the ballots cast, was ignored although protected by the Universal Declaration of Human

[15] Jack Donelly, 'The Relative Universality of Human Rights' (2007) 29 Human Rights Quarterly 281, 284
[16] Emmerson Mnangagwa interview with Fergal Keane (BBC News) 27 June 2018 https://www.bbc.co.uk/news/world-africa-44619102
[17] Emilie Hafner-Burton, 'Sticks and Stones: Naming and Shaming the Human Rights Enforcement Problem' (2008) Volume 62 International Organisation 689, 692
[18] European Union Election Observation Mission, Final Report Republic Of Zimbabwe Harmonised Elections 2018 (page 47) https://cdn5-eeas.fpfis.tech.ec.europa.eu/cdn/farfuture/4oA6Nz1VZuz_CU9oHsm1dkLdmSSO-jhl8H_altt88n0/mtime:1539116530/sites/eeas/files/eu_eom_zimbabwe_2018_-_final_report.pdf

Rights,[19] there was less hope for outside institutions succeeding in registering a point with the state.

The state's own court system reveals its ideas on access to justice which is emphasised as a key element of international human rights.[20] In Zimbabwe, only those who are aligned to the 'correct' political party are elected to high offices. The election of Justice Priscilla Chigumba as Zimbabwe Electoral Commission chairperson was highly criticised as she was said to only have been elected because of her alignment to ZANU-PF.[21] Having a chairperson who sympathised with the party would allow election results to be tampered with supporting the view of the citizens that the vote was rigged. The court is essentially tied to the ruling party so there is an inherent lack of independence and the presence of bias.[22] International human rights call for independent courts to hear matters of violations,[23] but the domestic system is already so corrupt seeing no value in transparency. International law has positively shifted its focus from state to state relations to protection of the individual's rights as indicated by Sohn.[24] This means the state has a great responsibility as the agent of human rights protection but how can this work with the state that Zimbabwe is in? Ranked 113th out of 113 countries examined in the World Justice Project Rule of Law Index 2017-18 for its protection of fundamental rights,[25] one must consider where the conversation about the state as protector is supposed to begin.

In Zimbabwe, the relevant structures and legislation on the protection of human rights (such as a Human Rights Commission), courts at various levels and the national constitution are in place. The problem, however, is that these are either inaccessible, redundant or lacklustre efforts to uphold citizens' rights that exist merely to placate the public and create the impression that human rights are valued and enforced. The example of the courts has been explored and features again where the Human Rights

[19] Article 21 (3)
[20] ibid (n 9) Article 10
[21] Joe Brock, 'Rifts at the Top Rattle Zimbabwe After Mugabe' (22 August 2018 Reuters Special Reports) **<** https://uk.reuters.com/article/uk-zimbabwe-election-rifts-insight/rifts-at-the-top-rattle-zimbabwe-after-mugabe-idUKKCN1L71BL>
[22] Alex Magaisa, 'Justice Chigumba - the New ZEC Chairperson' (BSR 31 January 2018) < https://www.bigsr.co.uk/single-post/2018/01/31/BSR-Justice-Chigumba---the-new-ZEC-Chairperson>
[23] International Covenant on Civil and Political Rights Article 14
[24] Louis B Sohn, "The New International Law: Protection of the Rights of Individuals Rather Than States" (1982) 32 Am. UL Rev 1
[25] World Justice Project Rule of Law Index 2017–2018

Commission is concerned. Provision for the creation of the Commission was given in the Constitution[26] and it aims to educate rural and disadvantaged communities, primarily, about their human rights. However, even if claims of human rights were to be brought to court by victims, there is little chance that the judges will make a finding against the state.[27] In any case, the chairperson of the Commission is to be chosen by the president leaving little room for the independence that a National Human Rights Institution (NHRI) such as this needs if it is to operate at maximum efficiency. The president makes this appointment without the advice of the Judicial Service Commission.[28]

It is difficult to create awareness of and a true belief in one's entitlement to these rights when the government's actions are the opposite. In a bid to hold onto power and intimidate the opposition, Robert Mugabe ordered Operation Murambatsvina[29] (Say No To Dirt/Rubbish), which led to the destruction of homes and small businesses leaving the victims, many of whom actually turned out to be his own supporters, homeless, hungry and unemployed.[30] Compliance will only show that Zimbabwe is a state party to a host of human rights treaties that it signed in 1991 but the frightening lack of implementation will not be recorded unless one actually draws aside the curtain of figures and conducts research. Failing to carry out such research leaves unexplored the reasons that have informed the figures produced in the index or on a chart. By taking the figures at face value, the assumption made is that the states examined were on equal footing and the economic, political and cultural climate in one country was the mirror image of that in another.

The Image on a Regional Scale

Changing the focus from the country to the region more broadly offers less inspiration. The disillusionment with the concept of international human rights remains.

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[26] Constitution of Zimbabwe Chapter 12, Part 3, Section 242
[27] Gugulethu Moyo, 'Corrupt Judges and Land Rights in Zimbabwe' Transparency International, Global Annual Report (2007)
[28] Lovemore Chiduza, 'The Zimbabwe Human Rights Commission: Prospects and Challenges for the Protection of Human Rights' (2015) 15 Law Democracy & Development 156
[29] Anna Kajumulo Tibaijuka, Report of the Fact-Finding Mission to Zimbabwe to assess the Scope and Impact of Operation Murambatsvina by the UN Special Envoy on Human Settlements Issues in Zimbabwe (refer to pages 12-20 for background information on the operation)
[30] Rhode Howard-Hassmann, 'Mugabe's Zimbabwe, 2000-2009: Massive Human Rights Violations and the Failure to Protect' (2010) 32 Political Science Faculty Publications 898, 902

Compliance is an empty exercise where these rights are not actually protected or enforced leaving very little to be measured. The responsible regional bodies themselves have often done nothing when faced with states conducting gross human rights violations and leaders in the region have protected each other rather than the rights of the citizens.

As well as other world leaders, Thabo Mbeki, former president of South Africa, protected Mugabe from UN sanctions as a response to his campaign of violence in 2008 in keeping with his 'quiet diplomacy'[31] policy which saw him contest sanctions that the United States of America sought to impose on Zimbabwe. The African Union did not reprimand Mugabe for Operation Murambatsvina or publicise the appalling human rights record of Zimbabwe that had been produced by its own Commission on Human and People's Rights.[32]

The African Court of Human and Peoples' Rights was established in 2004 and as a comparatively young system, its work has been plagued by numerous difficulties. The Commission has a duty to refer cases of violations to the court but has not done so consistently illustrated by the fact that the court has only decided one case since its establishment, and the case referred in this instance was dismissed on grounds of admissibility. A report by the Open Society Justice Initiative comprehensively explores the reasons behind the inefficiency and underutilisation of the African human rights system.[33] Among them are factors such as a 'lack of political will'[34] of the states themselves, poor implementation of recommendations by states due to their non-binding nature,[35] underdeveloped follow-up systems translating to poor progress management,[36] remedies that are overly complex or ill-suited to the victim[37] and its comparative newness. If the regional bodies are not critical of state parties or emphasising the importance of upholding human rights, the international bodies are even further removed from the situation and will struggle to make similar

[31] Martin Adelmann 'Quiet Diplomacy: The Reasons behind Mbeki's Zimbabwe Policy' (2004) 39 No 2 Africa Spectrum 249-76 http://www.jstor.org/stable/40175024
[32] ibid 910
[33] Open Society 'From Judgment to Justice: Implementing International and Regional Human Rights Decisions' 2010
[34] ibid 95
[35] ibid 96
[36] ibid 95
[37] ibid 100

recommendations heard, facing only disappointment when they return to measure compliance. These states are then labelled, somewhat unfairly, as areas of inactivity.

The Problematic History of the International Human Rights System

Some may struggle with the notion that this label is unfair, but this provides a segway into the discussion on the criticism of the international human rights system as overly Eurocentric or western and, rationally, inapplicable to all states. This will be the focus of this section.

It is highly ironic that what poses as an international system, supposedly all-encompassing, faces allegations that it lacks inclusivity. Marti Koskenniemi argues that the drive towards the establishment of the system of international law was 'for a global modernity – the dream of the entire world one day resembling Europe's idealized image of itself'.[38] If the entire system is based on the ideology of only one region, compliance cannot reasonably be expected from any other region otherwise this system runs the risk of instituting a second colonisation. Anthony Woodiwiss puts forward a strong argument that western states have a responsibility to introspect because they criticise states with poor human rights records, but the issue is that the plans for development they insist on do not fit or endanger pre-existing structures. There are no steps taken to remedy the gaps that are created by insisting on these incompatible strategies to ensure rights are still protected.[39] It is imperative that western states to come to the realisation that there cannot be a single model for international law to follow. The very essence of being an international system is to thrive on and strengthen the system through the diversity of its members rather than aim for conformity to a model that was relevant to a certain period and geographical location. The result is a continued emphasis on ill-fitted methods of analysis of human rights such as compliance reviews that neither reflect nor consider the history of or existing political climate in states like Zimbabwe.

[38] Martti Koskenniemi, '*A History of International Law Histories*' in The Oxford Handbook of the History of International Law (OUP 2012) 2
[39] Anthony Woodiwiss, 'Human Rights and the Challenge of Cosmopolitanism*'* (2002) 19 Theory, Culture & Society 139, 140

Robert Williams explores the growth of the role and presence of indigenous peoples in the human rights forum.[40] His article is interesting as it invokes contrasting sentiments charting the progress of the efforts of the United Nations Working Group on Indigenous Populations (Working Group). The Working Group had as its aim the drafting of a Universal Declaration on Rights of Indigenous Peoples. He is optimistic about this work stating that the process 'provided a sanctuary for indigenous peoples to practice their belief that, through their stories, they can raise consciousness and redefine the terms of their own survival in the world.'[41] On the one hand, the realisation that the contribution and participation of indigenous peoples and former colonies enriches the human rights system and assists in creating an understanding that human rights cannot be approached with a 'one size fits all' mindset is valuable. Williams makes this apparent but, in doing so, raises questions concerning the need for this entire process to begin with.

It is difficult to understand how human rights institutions can demand compliance from states where for so long, and even now in certain instances such as Australian Aboriginals, 'modern international law refuses to recognize indigenous peoples as "peoples," entitled to rights of self-determination as specified in United Nations and other major international human rights legal instruments.'[42] Zimbabwe, for example, has only been independent for thirty-nine years and the memory of the bitter Chimurenga (War of Independence) is still fresh.[43] The leaders of many former colonies are likely to have fought in such wars and have remained sceptical of the former colonisers and their ideals as a result. Following independence, Robert Mugabe's ZANU-PF party used the slogan 'Zimbabwe will never be a colony again' in the early 2000s as part of the election campaign.[44] This mindset informed the manner in which he ruled the country. He did not seek to engage with the West and remained suspicious of the region condemning it for imposing crippling sanctions on the

[40] Robert Williams, 'Encounters on the Frontiers of International Human Rights Law: Redefining the Terms of Indigenous Peoples' Survival in the World' (1990) 39 Duke LJ 660
[41] ibid 676
[42] ibid 665
[43] Independence Day is celebrated on 18th April having been achieved in 1980.
[44] Chaumba, Joseph, Ian Scoones, and William Wolmer. "From Jambanja to Planning: The Reassertion of Technocracy in Land Reform in South-Eastern Zimbabwe?" (2003) 41 The Journal of Modern African Studies 10

country.[45] It is these same leaders that international human rights organisations are attempting to engage with. It is not surprising that meetings may be attended, and treaties signed but the leaders have no real intention of implementing the terms.[46] These gestures are merely symbolic.[47]

The western states presented a rather utopian and hypocritical ideal of a coming together of all states working towards a common goal regarding one another as equals, but this was not the reality then[48] and neither is that the case in the present day. The same states, such as the British Empire and the United States of America, that declared the land of other populations *terra nullius* and made doctrines such as the Discovery Doctrine[49], have shed this identity and now set standards for human rights, a large part of which is self-determination. There has been no acknowledgement of this history,[50] but it seems peoples that were formerly oppressed are simply expected to accept the new status quo and conform to it. Had there been respect for the right to self-governance in the past, there would be no need for Working Groups to discuss the fact that other humans deserve the same human rights that are being discussed and protected by treaties. A platform like the Working Group on the Rights of Indigenous Populations provided former colonies a platform to express their views on the need for greater inclusion within the international legal community as the discussions at the forum led to the 1993 draft of the United Nations Declaration on the Rights of Indigenous Peoples (eventually adopted in 2007).[51] However, this would not cure the divide between coloniser and colony because as Karen Engle asserts, the Declaration did not grant indigenous populations total self-determination.[52] As a close reading suggests, the right to self-determination was curbed. The populations' self-determination would only be recognised as far as its exercise lay within the prescribed

[45] Ian Phimister and Brian Raftopoulos, 'Mugabe, Mbeki & the Politics of Anti-Imperialism' (2004) 31 Review of African Political Economy 385, 387
[46] Oona A Hathaway, 'Do Human Rights Treaties Make a Difference?' (2002) 111 Yale Law Journal 1942, 2020
[47] Eric Neumayer, 'Do International Human Rights Treaties Improve Respect for Human Rights?' (2005) 49 Journal of Conflict Resolution 6, 33
[48] Brett Bowden, 'The Colonial Origins of International Law. European Expansion and **the** Classical Standard **of** Civilization' (2005) 7(1) Journal of the History of International Law 15
[49] ibid 688
[50] ibid (n 39) 386
[51] Karen Engle, 'On Fragile Architecture: The UN Declaration on the Rights of Indigenous Peoples in the Context of Human Rights' (2011) 22: 1 European Journal of International Law 141,143 https://doi.org/10.1093/ejil/chr019
[52] ibid 150

boundaries of international law.[53] The power imbalance would still remain with the former colonisers at the helm of setting these boundaries.

Cynics would question why it seems the onus is on the indigenous groups to plead their cases and justify why they must be given equal recognition. The system seems geared against these formerly excluded states. Firstly, post-World War II, the drive towards the establishment of a human rights system was initiated but many states had not achieved 'state' status or were still fighting for independence so were excluded. To put this into perspective, one of the first African countries to achieve independence was Ghana in 1957[54] and yet the League of Nations was established in 1920 and the United Nations in 1945. The foundations of international law and human rights were already laid in the absence of a significant number of states. Secondly, where these states later attempted to make contributions they were met with inflexibility. The response in the Vienna Declaration 1993[55] to the Asian values ideology that challenged the human rights system as being based on Western values and incapable of being called universal is a prime example.[56] There would be no grounds for or opportunity to challenge these rights even if based on an ideological conflict. Reluctance to consider the opinions of others falsifies the label of 'international' human rights.

Compliance damages the image that the human rights system has attempted to build because compliance scores the states indiscriminately where the system behind it is meant to take account of and appreciate the differences in each of the members.[57]

One of the effects of the international human rights system is the promotion of discourse,[58] provision of a common language in which to understand human rights and creation of the vision of an ideal world to work towards. This can be linked to the

[53] ibid
[54]The Commonwealth, History of Ghana article http://thecommonwealth.org/our-member-countries/ghana/history
[55] Chapter 1, part 5
[56] ibid (n 17) 147
[57] Robert Ward, An Enquiry into the Foundation and History of the Law of Nations in Europe: From the Time of the Greeks and Romans, to the Age of Grotius (1 Garland Publishing Inc New York & London 1795) 138 and 139
[58] Douglass Cassel, 'Does International Human Rights Law Make a Difference?' (2001) 2(1) Chicago Journal of International Law page 122, 126-9

'standard of civilization' function'[59] of human rights debates. The discussions between states are effective as those that are not performing can be identified and shamed. No state would purposefully seek a poor human rights reputation[60] as evidenced by the recently published report by Phillip Alston, the Special rapporteur on poverty and human rights, following his tour of the UK. He declared that it 'is a political choice'[61] for a country to assist the less fortunate and ensure they maintain their dignity, and this has brought embarrassment to the UK but has also created space for more conversation around the effect of austerity measures on the lower social classes as recommendations to the UK government are given in the conclusion of the report.[62] The importance of discussion, which is a large part of the work of non-governmental organisations like Amnesty International and Freedom House, cannot be overshadowed by the quest for concrete results. Greater emphasis must be placed on the impact of discussion as a means through which to promote and deepen the impact of international human rights. The bodies responsible for conducting compliance exercises should not haste to measure what is or is not there before dialogue can be had to set out a clear image of the state in question taking into consideration the history, political climate and other elements acting on the state.

Looking only at compliance does not assist the current international human rights system to change and adapt to the reality. In regions where its normative effect is not seen or felt, compliance merely shows that no action is being taken but one must think more broadly. Robert Howse and Ruti Teitel suggest that jumping ahead to compliance takes for granted that there are no interpretation issues and all states in agreement on the meanings of certain rules or words in international law.[63] However, it is unclear to some states and their governments what punishing state 'defectors' is and when it becomes deprivation of liberty and infringement of freedom from torture,

[59] ibid (n 1) 130
[60] Jasper Krommendijk, 'The Domestic Effectiveness of International Human Rights' (2015) Rev Int Organ 10 489, 493 https://link.springer.com/content/pdf/10.1007%2Fs11558-015-9213-0.pdf
[61] Statement on Visit to the United Kingdom, by Professor Philip Alston, United Nations Special Rapporteur on Extreme Poverty And Human Rights (16 November 2018) Available at https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23881&LangID=E
[62] Women's Budget Group Director Mary-Ann Stephenson response to Philip Alston's report on Poverty in the UK (Phillip Alston, UN Special Rapporteur on Extreme Poverty: WBG responds to his report on UK poverty) 23 May 2019 < https://wbg.org.uk/blog/wbg-responds-to-phillip-alston-un-special-rapporteur-on-extreme-poverty-report-on-uk-poverty/>

[63] ibid (n 1) 135

for example. Itai Dzamara, a Zimbabwean activist and journalist, was abducted in 2015 after speaking out against Mugabe's regime. He was labelled a defector; in fact, his whereabouts are still unknown three years later. It is crucial for it to be clear where lines are drawn with all states before compliance passes a verdict.

Conclusion

Discussions can often end up being one-sided because, in a bid to celebrate the achievements of human rights, the negative effects of international law may be obscured. The war on terrorism is a relevant example. The United Nations has urged member states to take measures to fight terror with the United States of America taking the lead. States are complying with the direction from an international body to protect citizens but what of the number of people being killed by the missile strikes in Afghanistan? Does this mean it is legal to deprive another human being of their right to life to tackle terrorism? One goal is achieved while a fundamental right is infringed upon, but the focus is primarily on the 'success' of the war on terror rather than the terrorism the states are then carrying out on the suspected perpetrators.

The fact that there needs to be a discussion in any event on whether this all-embracing system of rights protection is working is simply fodder for the sceptics' writing. There may be an element of excessive optimism around the system and not all states find themselves in a cultural, political or historical state to engage with these lofty principles. An understanding of this is imperative before any discussion on compliance can take place. Unless this is acknowledged, and active steps are taken to reform the system, there will be continued resistance from certain regions who are not yet ready to participate, do not feel there is anything to gain or feel drowned out and unheard. This is not a call for a total abandonment of the system as allowing states to determine their own human rights standards would lead to a terrifying state of affairs. The current system will have to remain, but context should trump the conversation of compliance in determining the normative effect of international human rights law and how to adapt it to be truly international. Without an understanding of the spaces in which international human rights values are trying to be applied, reviewing compliance is hollow. The question of why human rights are not being upheld is left unconsidered or, alternatively, there is hesitation to explore this question knowing the controversial history behind the system.

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